

Legislation Bars Employers from Conducting Criminal Background Checks During Initial Stages of Hiring

by Maja Obradovic, Esq.



New Jersey's recent enactment of the Opportunity to Compete Act requires employers to delay criminal background checks until after the first interview of an applicant. The Act will take effect on March 1, 2015. The adopted version of the legislation, which was signed into law by Governor Christie on August 11, 2014, is significantly watered

down from its original proposal, as well as in comparison to legislation adopted by other states that prohibit employers from inquiring into a candidate's criminal record until a conditional offer is made.

In essence, the Act defers any inquiry into a candidate's criminal background until "the initial employment application process," typically the submission of an application and an initial interview, has been completed. The Act's passage is in keeping with a nationwide trend dubbed "ban the box," which seeks to reduce rates of recidivism by opening employment opportunities to individuals with criminal histories, reducing their high unemployment rate and utilizing their productive capacity.

The Act imposes the following restrictions upon employers. First, employers are prohibited from including in job advertisements statements that they will not consider applicants with prior arrests or convictions. Additionally, employers may not inquire into a candidate's criminal history during the initial contact (including the initial interview) unless such information is volunteered by the candidate.

The scope and application of the Act is limited, however. After the "initial employment application process," the Act does not preclude employers from checking the candidate's criminal background, nor does it bar employers from refusing to hire em-

ployees with prior criminal records. The Act applies only to employers with more than 15 employees, and does not apply to law enforcement, corrections, homeland security, the judiciary or to positions where law specifically requires or permits the consideration of a candidate's criminal history.

The Act does not provide for a private cause of action for its violation. Instead, violators will be liable for civil penalties that increase progressively based on the number of violations. Specifically, a first violation carries a \$1,000 penalty, a second violation carries a \$2,000 penalty, and each subsequent violation carries a \$10,000 penalty.

What Should Employers Do?

In light of the enactment of the Opportunity to Compete Act, employers should review and revise their employment applications and hiring policies before March 1, 2015 to eliminate any questions regarding candidates' criminal records or any history of prior arrests. Likewise, the appropriate changes should be made to employee handbooks and human resources personnel should be trained on the Act's prohibitions and requirements.

While the early proposals of the Act included the definition of inquiry, the enacted version omits it. It is thus unclear whether the Act prohibits independent criminal record checks. Considering the intent of the Act and to ensure compliance, it is recommended that employers do not take any steps towards ascertaining whether an applicant has a criminal background before the initial application process is over.

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MCBA Joins Lawyers Feeding New Jersey Campaign to Help Fight Hunger in the State

On October 1, 2014, the New Jersey State Bar Association (NJSBA) launched the Lawyers Feeding New Jersey Food Campaign, a 60-day project to raise money and awareness for the hunger crisis in New Jersey. According to NJSBA President Paris Eliades, 1.2 million New Jersey residents are "food insecure." This means that they lack the financial resources necessary to secure adequate food on a regular basis for themselves and their families. In fact, more than 2/5 of our state's food insecure residents are children and 30% are elderly or disabled. Nearly half of New Jersey households reporting food insecurity do not qualify for public assistance. They turn to community food banks for help.

Kathleen Diciara, founder and CEO of Community Food Bank of New Jersey states that at the end of the past fiscal year, her organization distributed 41 million pounds of food and "it is

still not enough." However, she indicates that together, we can make a difference. For every \$1, the Community Food Bank of New Jersey receives it can distribute \$9 to \$10 worth of food.

The MCBA can help. Lawyers Feeding New Jersey is a campaign in which lawyers compete as individuals or as teams to raise money and fight this growing hunger epidemic. **The MCBA has formed a team of its own.** Lawyers always fight for clients and zealously advocate for justice. Now, it is time to unite as Middlesex County lawyers and donate to this worthy cause.

All donations are 100% tax-deductible and will benefit Community FoodBank of New Jersey, which provides food and funds to food banks throughout the state. Go to www.mcbalaw.com for more information and to make a donation on the MCBA team page.